

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 26, 2007

**STATE OF TENNESSEE v. JEFFERY RATLIFF A/K/A  
JEFFERY ABSHER**

**Appeal from the Criminal Court for Sullivan County**

**No. S48,770     Phyllis H. Miller, Judge**

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**No. E2006-01527-CCA-R3-CD - Filed February 20, 2008**

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The defendant, Jeffery Ratliff a/k/a Jeffery Absher, was convicted of six counts of rape of a child, a class A felony, T.C.A. § 39-13-522; one count of especially aggravated sexual exploitation of a minor, a Class B felony, T.C.A. § 39-17-1005; one count of aggravated sexual battery, a Class B felony, T.C.A. § 39-13-504; and six counts of incest, a Class C felony, T.C.A. § 39-15-502. He received a total effective sentence of 112 years. On appeal, he argues that (1) the evidence is not sufficient to support his convictions, (2) the trial court erred in failing to suppress a videotape, (3) the videotape was not properly authenticated before being admitted into evidence, and (4) the trial court erred in allowing a transcript of the videotape to be submitted to the jury. We conclude that no error exists, and we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and D. KELLY THOMAS, JR., JJ., joined.

Stephen M. Wallace, District Public Defender, and William A. Kennedy, Assistant Public Defender, for the appellant, Jeffery Ratliff a/k/a Jeffery Absher.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Senior Counsel; H. Greeley Wells, Jr., District Attorney General; and Barry P. Staubus, Deputy District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case arose after authorities found a videotape, dated February 16, 2002, showing the defendant and his wife engaged in various sexual acts with the minor victim, the defendant's stepdaughter. Based on what was depicted in the video, the defendant and his wife were charged with six counts of rape of a child, six counts of incest, one count of aggravated sexual battery, and

one count of especially aggravated sexual exploitation of a minor. The defendant was tried separately from his wife.

At the defendant's trial, Officer Jeff Cassidy of the Sullivan County Sheriff's Department testified that while on duty on January 24, 2004, he received a call to investigate a report of a young boy walking alone along New Besonwell Road in Sullivan County at about 8:00 p.m. He said he arrived at the scene after Sergeant Jeff Parker had apprehended the boy and put him in a patrol car. Officer Cassidy said he identified the boy as L.R.<sup>1</sup> and said L.R. was about eight years old. L.R. was dressed in jeans, a t-shirt, and shoes but was not wearing a coat, hat, or gloves even though the temperature was about thirty-two degrees. L.R. directed Officer Cassidy and Sergeant Parker to his house.

Officer Cassidy testified that as they pulled into the driveway, their headlights shined upon a girl running toward the back of the house. They walked to the back of the house and found the girl trying to hide behind a heat pump. They later identified the girl as the eleven-year old victim, K.R. Officer Cassidy said K.R. was wearing a sweater and jeans but no shoes or socks. He said K.R. appeared to be nervous and scared and had a large bruise on her neck. When he asked her about the bruise, she just lowered her head and "looked shy about it." He seated K.R. in his patrol car, while L.R. remained in Sergeant Parker's car. He and Sergeant Parker then knocked on a side door of the home and were answered by Sherrie Ratliff, the defendant's wife, who was not clothed and was holding an infant. Mrs. Ratliff told the officers to wait while she got dressed, but she came to the door a few minutes later and was still unclothed. She asked the officers if they found her son, and they informed her that they did.

Officer Cassidy testified that they had reason to believe that the defendant was in the house and asked Mrs. Ratliff if they could check the house for their safety. He described the house as not being very large, with three bedrooms, one bathroom, a living room, and a kitchen. He said he looked inside two bedrooms. He said he pulled down a ceiling door that led to the attic and saw the defendant in a crouched position at the top of the folding stairs. He said that he also had occasion later to look into some of the bedrooms of the house and that he observed a pink vibrator and pornographic material in what appeared to be K.R.'s bedroom. Cassidy was able to determine that K.R. and L.R. were the children of Mrs. Ratliff and the stepchildren of the defendant and that the defendant and Mrs. Ratliff had two young children together.

Sherry Ramsey-Miller testified that she was formerly Detective Sherry Ramsey of the Sullivan County Sheriff's Department Child Abuse Investigations division. On the evening of January 24, 2004, she responded to a call regarding an incident at the defendant's house. When she arrived at the house at about 9:30 p.m., Parker and Cassidy were there. She said that at some point, Sarah McConnell, a Department of Children Services (DCS) investigator also arrived. She said the following additional people were in the house: the defendant, Sherrie Ratliff, and the two infant

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<sup>1</sup> As is the custom of this court, we refer to minors by their initials.

children of the defendant and Mrs. Ratliff. K.R. and L.R. were in the police cruisers when she arrived.

Ms. Ramsey-Miller testified that she interviewed K.R. alone in the house at some point in the evening. After interviewing K.R., she sought to interview the defendant and Mrs. Ratliff. She said she advised Mrs. Ratliff of her rights and obtained a consent to search her home. In addition, she said that the defendant agreed to go to the Kingsport Police Department for an interview. Ms. Ramsey-Miller said that before her interview with the defendant, she was present as Ms. McConnell and Sullivan County Sheriff's Detective Landon Bellamy advised the defendant of his rights. She said the defendant knowingly waived his rights and signed an advice of rights form. The defendant also consented to a search of his residence and signed a consent to search form. The form was signed sometime after midnight on January 25, 2004. She said the defendant told her that he and Mrs. Ratliff were married on June 17, 2000, that they had two children together, and that K.R. and L.R. were Mrs. Ratliff's children from another marriage. The defendant identified K.R. as his stepdaughter.

Using a key given to her by the defendant, Ms. Ramsey-Miller and other detectives conducted a search of the defendant's house. She said they were looking for a videotape, which they found in a closet in the defendant's and Mrs. Ratliff's bedroom. She said she took the tape with her to the Sullivan County Sheriff's office, where she viewed it in its entirety. She said she had watched it at least twenty times before the trial, including on the morning of the trial. She identified a copy of the videotape and testified that it was a true and exact copy of the tape that she found in the defendant's bedroom. She identified the following people seen in the tape: the defendant, Mrs. Ratliff, K.R., and a child who was about one month old at the time. She said she could identify the defendant by his face and his voice. She also heard K.R.'s and Mrs. Ratliff's names spoken in the video. She said the defendant referred to himself as "daddy" in the video and referred to Mrs. Ratliff as "mommy." The tape was dated February 16, 2002.

On cross-examination, Ms. Ramsey-Miller acknowledged that she was not present when the videotape was made and that she did not know if any alterations were made to it before she found it. She said the videotape included a time and date stamp, and she acknowledged that since she found the tape, no one had checked the time and date stamp on the video recorder to ensure that the time and date on the video were accurate.

Ms. Ramsey-Miller testified that a transcript was prepared reflecting the audible portions of the video. She said that she reviewed the transcript while watching the video and that it was accurate. The jury was given copies of the transcript as an aid while they viewed the videotape in its entirety.

The video shows three people, a man, a woman, and a younger female, engaged in various sex acts between 9:08 p.m. and 10:15 p.m. All three were fully unclothed, and at the beginning of the video, the woman is holding a small infant. The man's voice is audible throughout the video, and he refers to the girl by the victim's first name, the woman as "your mom," and himself as

“daddy.” The acts shown in the video include the girl and woman performing fellatio on the man at 9:15 and 9:32, the man touching the girl’s genitalia at 9:45, the girl using a pink vibrator on the woman at 9:47, the girl performing cunnilingus on the woman at 9:48, and the girl performing fellatio on the man at 10:14 and at 10:15. Many of these acts were preceded by the man giving the girl instructions on what to do.

Ms. Ramsey-Miller testified that the bruise seen on K.R.’s neck on January 24, 2004, was a hickey. She said she knew this because the defendant told her that K.R. had a hickey on her neck. She said she asked the defendant about the pink vibrator that was found in K.R.’s bedroom, and the defendant told her the vibrator belonged to Mrs. Ratliff. Ms. Ramsey-Miller said the videotape showed a vibrator that was the same color, shape, and size as the one found in K.R.’s bedroom. Ms. Ramsey-Miller also identified a photograph of K.R. that was found during the search of the house. The photograph shows K.R. in her underwear holding a Polaroid videotape box.

Wayne Deere testified that he owned rental properties, including a house in Kingsport that was rented to the defendant and Sherrie Ratliff from July 2000 to December 2003. He said he viewed the videotape that was shown previously to the jury and identified the house in which it took place as the house that the defendant rented from him.

In addition to the above testimony, the state introduced into evidence a marriage certificate, which stated that the defendant and Sherrie Dorcus Rogers were married on June 17, 2000. The state also introduced K.R.’s birth certificate, which established her date of birth as April 29, 1991, and identified her mother as Sherrie Dorcus Rogers. The jury found the defendant guilty of all charges.

## **I. SUFFICIENCY OF THE EVIDENCE**

The defendant challenges the sufficiency of the convicting evidence. He argues that “the only evidence provided was the video tape” and that this “was clearly not enough to convict.” The state counters that the videotape was sufficient to establish the defendant’s guilt on all charges.

Our standard of review when the defendant questions the sufficiency of the evidence on appeal is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). We do not reweigh the evidence; rather, we presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997).

The defendant was convicted of six counts of rape of a child, which is defined as “the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is less than thirteen (13) years of age.” T.C.A. § 39-13-522(a). Our code defines “sexual

penetration” as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genitalia or anal openings of the victim’s, the defendant’s, or any other person’s body . . . .” Id. § 39-13-501(7). The defendant was also convicted of six counts of incest, which occurs when a person engages in sexual penetration with another, knowing the other person to be, *inter alia*, the offender’s child or stepchild. Id. §39-15-302. The defendant was also convicted of one count of aggravated sexual battery, which is the “unlawful sexual contact with a victim by the defendant or the defendant by the victim” when the victim is less than thirteen years old, id. § 39-13-504(a)(4), and especially aggravated sexual exploitation of a minor, which is “to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance or in the production of material which includes the minor engaging in . . . [s]exual activity,” id. § 39-17-1005(a)(1). The presentment states that all acts occurred on February 16, 2002, and that the rape of a child and incest offenses occurred at 9:15 p.m., 9:32 p.m., 9:47 p.m., 9:48 p.m., 10:14 p.m., and 10:15 p.m. It states that the aggravated sexual battery occurred at 9:45 p.m.

We hold that the evidence is sufficient to support convictions on these charges. There was evidence that the videotape introduced at the trial was an exact copy of a tape found in the defendant’s bedroom. There was further evidence allowing the jury to find that the video depicted the defendant, Mrs. Ratliff, and the victim, K.R. The video shows penetration either of the victim or by the victim on the times stated in the presentment and an additional act of the defendant touching the victim’s genitalia at the time that the aggravated sexual battery was alleged to have occurred. Evidence showed that the victim was less than thirteen years of age at the time the offenses occurred and that the defendant was married to the victim’s mother, making the victim his stepdaughter. The evidence is sufficient to support all convictions.

## **II. VIDEOTAPE EVIDENCE**

### **A. Motion to Suppress**

The defendant challenges the admissibility of the videotape into evidence. At the motion to suppress hearing, Sullivan County Sheriff’s Sergeant Jeff Parker testified that in response to a call on January 24, 2004, about a child walking alone on New Besonwell Road in Sullivan County, he picked up L.R. He said it was dark and approximately thirty-four degrees. He said L.R. was wearing a sweater, jeans, and tennis shoes but not a coat. L.R. told him that L.R.’s stepfather “put him out of the house” and that L.R. was walking to a friend’s house. L.R. told Sergeant Parker he did not want to go back home, but Parker met Officer Cassidy and the two drove to L.R.’s home, with L.R. in Parker’s car.

Sergeant Parker testified that as they drove into the driveway of L.R.’s home, they saw a girl run toward the back of the house. He and Cassidy found K.R. behind the house wearing a sweater and jeans but no socks or shoes. She said “they had put her out of the house.” K.R. sat in Cassidy’s car while Cassidy and Parker knocked on the door of the house. Parker said that after several knocks, Mrs. Ratliff answered the door, not wearing any clothes. She told them to wait a minute,

and she returned several minutes later and opened the door for them. Parker told her they wanted to come inside to talk to her about L.R. and K.R. She let them inside the house and told them no one else was in the house. Parker said that he asked if they could look around the house to be sure no one else was there and that she allowed them to do so. Parker said that when they started looking around the house, he noticed Mrs. Ratliff was still undressed, and he asked her to get dressed. He said that he asked Mrs. Ratliff about her husband and that she said her husband had left the house walking. He asked her why the children were outside, and she said she got into a fight with L.R. regarding his report card and that he left the house. She said she thought K.R. was inside the house.

Parker testified that he went outside to speak to K.R., who told him that her stepfather had “put her out” and locked the door on her. She was upset and crying and said her stepfather told her “if he went to jail that he’d get me.” Parker went back inside the house and found Cassidy talking to the defendant, who was wearing only sweat pants and whom Cassidy said he found in the attic. The officers were curious as to why the defendant was hiding in the attic and checked to see if there were any warrants out for his arrest. There were none. The defendant told them that he put the children outside the house and locked the door. Parker said that he told the dispatcher to notify DCS, and he notified Detective Sherry Ramsey. Parker and Cassidy waited outside the house until Detective Ramsey and a DCS worker arrived.

As Ramsey and the DCS worker talked to Mrs. Ratliff in the kitchen, Parker and Cassidy stood in the living room, with the defendant nearby. Parker said he noticed a lot of videotapes lying around in the house. He said Cassidy saw the edge of a plastic bag sticking out of a cabinet containing videotapes and grabbed it. The bag contained what appeared to be marijuana seeds. Parker asked the defendant if there were other drugs in the house and if they could look around the house. He said that the defendant first said that they would have to ask his wife but that, upon further questioning by Parker, the defendant agreed to the search. Parker said he walked into one of the three bedrooms of the house and began to search the dresser drawers. He said the defendant told him that everything in the room belonged to K.R. Parker found “cigarette pack wrappers” with what appeared to be marijuana residue, some pornographic magazines, and a pink vibrator. He said he found more pornographic material in another drawer. He said he and Cassidy went to the kitchen, where Detective Ramsey was interviewing Mrs. Ratliff, and asked Mrs. Ratliff if she knew whether K.R. used drugs or was sexually active. She told them she did not have knowledge of K.R. using drugs or being sexually active.

Sergeant Parker said Detective Ramsey went outside to speak to L.R. and K.R. and brought them inside the house to use the bathroom. K.R. told Detective Ramsey the defendant put a hickey on her neck. The decision was made to remove all the children from the house, and the defendant and Mrs. Ratliff were asked to go to the Kingsport police station to be interviewed. He said neither the defendant nor Mrs. Ratliff were placed under arrest, nor were they coerced or threatened. He said they did not appear to be under the influence. Parker said he did not participate in the interviews of K.R., Mrs. Ratliff, or the defendant. He said he did see Cassidy accompanying the defendant on a smoke break.

On cross-examination, Sergeant Parker testified that he made the initial walk through the house because L.R. told him the defendant had thrown him out of the house, but Mrs. Ratliff said he was not home, and he wanted to make sure this was true. He said that he and Cassidy waited in the living room while Detective Ramsey spoke with Mrs. Ratliff in the car and that they were not “looking around” the house at that time. He said he did not see the baggie sticking out of the drawer before Cassidy pulled it out. He acknowledged that finding the baggie containing marijuana seeds led to his asking the defendant if there were any other drugs in the house and if they could look around the house. He agreed there was no way of knowing marijuana would be found in the bag just from seeing it sticking out of the drawer. He said he did not obtain a signed written consent to search until after the defendant was taken to the police station and that he did not take anything out of the house before obtaining the signed consent. He said an officer had discretion whether to arrest a person for possessing marijuana seeds.

Officer Jeff Cassidy testified that he followed Sergeant Parker to the defendant’s residence and saw K.R. run behind the house and saw her hiding behind the heat pump. He said that Mrs. Ratliff twice answered him and Parker at the door without wearing any clothes, even after she said she was going to get dressed. He said that although Mrs. Ratliff said her husband had left the house walking, he did not see anyone walking on the road while he was driving to the house. He said they asked to look around the house to make sure the defendant was not there. He said that his intuition told him someone was home and that he pulled down the ceiling door to the attic and saw the defendant at the top of the stairs.

Officer Cassidy testified that after Detective Ramsey and the DCS worker arrived and began interviewing Mrs. Ratliff in the kitchen, he and Sergeant Parker waited in the living room. He said he saw stacks of videotapes and a plastic bag sticking out of a drawer in the living room. He said he grabbed the bag, which was a two-gallon bag containing marijuana seeds. After finding the bag, he and Parker asked the defendant if they could look around the house. The defendant initially said they would have to ask his wife, but after Parker told him that he could give them permission because he was married to Mrs. Ratliff and they both lived in the house, the defendant granted them permission.

Officer Cassidy testified that he looked in the attic, where he found the defendant hiding earlier, and did not find anything of interest. He said that when he went downstairs, Sergeant Parker directed him to K.R.’s bedroom, where he saw pornographic material, a vibrator, and rolling paper. He said the defendant told Parker the items belonged to K.R. He said they showed the items to Detective Ramsey and that Detective Ramsey later asked the defendant and Mrs. Ratliff to go to the Kingsport police station to give a statement. He said they were not handcuffed and were not under arrest at that time. Cassidy also went to the police department and stayed with the defendant. He said he had to stay with the defendant because they were in a secured facility, not because the defendant was under arrest. He said the defendant was allowed to go to the restroom, had drinks and snacks, and had three or four smoke breaks. He said he did not hear any threats made against the defendant or Mrs. Ratliff.

On cross-examination, Officer Cassidy testified that Mrs. Ratliff did not appear to be under the influence when she answered the door. He said he saw approximately one inch of the plastic bag and did not see any seeds before he grabbed it from the drawer. He said he grabbed the bag because he was “[j]ust noseey, just curious to see what it was.” He said, however, that in his experience, a plastic bag hidden in a drawer usually contained marijuana. He said he also felt something was “not right” in the house because the defendant had hid from them. He said officers do not usually charge a person for possessing marijuana seeds but that finding the bag of seeds, along with the defendant’s hiding, “triggered” him and Parker to ask the defendant to “look around” the house. He said that while at the police station, if the defendant had wanted to leave, he would have let the defendant go and would have told the detective about it.

Sherry Ramsey-Miller testified that she was the detective called to the defendant’s house to investigate the situation with K.R. and L.R. She said she and a DCS worker, Charlotte Little, were called there to find out why the children were locked out of the house. She and Ms. Little interviewed Mrs. Ratliff in the kitchen and obtained a statement from her. She said Mrs. Ratliff was not under arrest at this time and was not advised of her rights. She said Mrs. Ratliff was responsive and cooperative and did not appear to be intoxicated. She said that as Mrs. Ratliff was reviewing and signing her statement, one of the officers told her they had found a baggie containing seeds. She said that another DCS worker, Sarah McConnell, arrived at the house and informed her that DCS decided to remove all the children from the home. Ms. Ramsey-Miller said that she went to tell K.R. and L.R., who were still in a patrol car outside, and that she brought the two inside so that L.R. could use the restroom while K.R. packed clothes for herself and her siblings. She said that in the light of the house, she could see the hickey on K.R.’s neck, asked K.R. about it, and was told by K.R. that “Jeff” had put it on her. She said she also asked K.R. about all the videotapes she saw around the house and whether she was in any of the tapes, to which K.R. responded positively. She said that after speaking with K.R., she learned of the sexual device found in K.R.’s bedroom. Ms. Ramsey-Miller then asked the defendant and Mrs. Ratliff to accompany them to the police station and give statements. She said they agreed without being threatened, coerced, or promised anything. She said they were not under arrest and were not told they were under arrest. She said nothing was taken from the home at that time.

Ms. Ramsey-Miller said that everyone left the house to go to the police station and that the defendant and Mrs. Ratliff locked the door and kept the keys. She said that she transported Mrs. Ratliff in the front seat of her vehicle and that Mrs. Ratliff never said she did not want to talk to her or that she did want a lawyer. At the station, Ms. Ramsey-Miller and Ms. McConnell interviewed K.R., who told them that she had been videotaped having sex with the defendant and Mrs. Ratliff. They then interviewed Mrs. Ratliff, after first advising her of her rights and having her sign a waiver of rights form. Ms. Ramsey-Miller testified that Mrs. Ratliff never said she did not want to talk to them or that she wanted to speak to an attorney. Ms. Ramsey-Miller said threats, coercion, and promises were not used to induce the statement and that Mrs. Ratliff knowingly and voluntarily gave a statement, which she signed. In the statement, Mrs. Ratliff alluded to sexual acts which occurred between herself, the defendant, and K.R. and the existence of a videotape. Mrs. Ratliff said she saw the videotape in the house. Ms. Ramsey-Miller testified that she obtained a signed consent to search



from Mrs. Ratliff. She said she told Mrs. Ratliff that they specifically wanted to search for the videotape but that the consent to search was broader than just the videotape and included anything in the house that was relevant to their investigation. She said that Mrs. Ratliff signed the form without force, coercion, intimidation, or promises, and that Mrs. Ratliff never revoked her consent after giving it.

After obtaining the consent to search from Mrs. Ratliff, Ms. Ramsey-Miller interviewed the defendant. She said Detective Landon Bellamy explained the advice of rights and consent to search forms to the defendant. She said Bellamy handed her the forms, which were signed by the defendant, and told her he had advised the defendant of his rights. She said the defendant acknowledged that he signed and agreed to the forms. She said the defendant was not coerced, threatened, or intimidated and was not handcuffed at the time. She said that the defendant began making a statement but that he later said he did not want to talk anymore and did not sign or initial the written statement. She said the defendant did not ask for a lawyer but did say he did not want to give a statement. She said she informed the defendant that he was under arrest and then asked him if they could still search in his house. She said the defendant gave her the keys to the house and told her he did not care if they searched and even told them they could look in the car. She said she then told Mrs. Ratliff that the defendant gave her the keys to the house and asked Mrs. Ratliff if she wanted to say anything else. Mrs. Ratliff gave another written statement, which included more incriminating statements about herself and the defendant. Ms. Ramsey-Miller said that she did not re-advise Mrs. Ratliff of her Miranda rights before taking the second statement but that Mrs. Ratliff never said she did not want to speak to her. She said she asked Mrs. Ratliff if she still gave them consent to search the house and that Mrs. Ratliff said she did. Mrs. Ratliff was placed under arrest after the second statement was taken. She said a third statement was taken from Mrs. Ratliff after Mrs. Ratliff was taken to jail and after Mrs. Ratliff said she wanted to speak to Ramsey-Miller again. Mrs. Ratliff was informed of her rights and signed an advice and waiver of rights form before making the third statement.

Ms. Ramsey-Miller testified that a search of the house was performed after the defendant and Mrs. Ratliff gave their written consent to search, and evidence, including a videotape, was seized from the house. Later, she obtained a search warrant based on what K.R. had told her and searched the house again. She said other evidence found in the house included sexual devices, photographs, and pornographic material.

On cross-examination, Ms. Ramsey-Miller testified that the officers told her about finding the bag with marijuana seeds after she obtained the statement from Mrs. Ratliff in the kitchen of the house. She said DCS decided to remove the children from the house because of drug evidence. She said she brought L.R. and K.R. into the house after the decision to remove the children was made. When inside the house, Ms. Ramsey-Miller saw the hickey on K.R.'s neck and asked her about it. Officer Cassidy told her about the items found in K.R.'s bedroom after Ms. Ramsey-Miller had already asked K.R. about sexual activity between her and the defendant. Ms. Ramsey-Miller testified that K.R. did not mention anything regarding her sexual conduct with her mother and the defendant until after going into the house to pack her belongings. She said she did not ask K.R. about the

hickey on her neck before this because she could not see the hickey when K.R. was still in the car outside.

Ms. Ramsey-Miller testified that Mrs. Ratliff never was reluctant or hesitant to speak to her and that she never told Mrs. Ratliff that she would not see her kids again unless Mrs. Ratliff cooperated. Ms. Ramsey-Miller said she did not hear anyone else make such a promise to Mrs. Ratliff. She said she would have stopped interrogating Mrs. Ratliff if Mrs. Ratliff indicated that she did not want to answer any more questions. Ms. Ramsey-Miller acknowledged that in her first written statement taken at the police station, Mrs. Ratliff stated that she would not “say anything to incriminate [the defendant] or me.” However, Ms. Ramsey-Miller said Mrs. Ratliff never told her she did not want to talk and that, even after making the above statement, Mrs. Ratliff continued to talk.

Sullivan County Sheriff’s Detective Landon Bellamy testified that he was called to assist Ramsey-Miller in the investigation of the defendant and Mrs. Ratliff at about 3:30 a.m. on January 25, 2004. He said that when he arrived at the police station, he saw the defendant smoking outside and accompanied by Officer Cassidy. He said the defendant was not in handcuffs. He said that before Ramsey-Miller interviewed the defendant, he advised the defendant of the defendant’s rights and had the defendant sign a waiver of rights form and a consent to search form. He said the defendant agreed to waive his rights without force, coercion, or threats. He said the defendant was cooperative and well-spoken. He said that when he reviewed the consent to search form with the defendant, the defendant told him he had “nothing to hide.”

The defense recalled Sergeant Parker, who testified that he did not immediately bring the marijuana seeds to Detective Ramsey’s attention. He said he told her after he looked through K.R.’s bedroom and found the other items there. He said he told her about the items, including the vibrator, found in K.R.’s bedroom before she brought K.R. into the house.

The court found that Cassidy and Parker initially entered the house with Mrs. Ratliff’s permission and that they also initially looked through the house with her permission. The court found that the defendant’s oral consent to search, given to Cassidy and Parker and which led to the discovery of sexual objects in K.R.’s bedroom, was voluntary. It found that Mrs. Ratliff and the defendant were properly Mirandized and voluntarily consented to another search of the home when they were interrogated at the police station. In addition, the trial court found that, even if the search of the house were illegal, officers still would have interviewed K.R. and would have obtained a search warrant. The trial court ruled that the videotape was admissible.

The defendant contends that the videotape was inadmissible because it was seized as the result of an illegal search of his home. He argues that any consent to search leading to the discovery of the videotape was not valid because it was given as a result of Officer Cassidy’s illegal search of a drawer in the defendant’s house. This search led to the discovery of a bag containing marijuana seeds, which led to the officers asking to search for other contraband, which led to their finding evidence of the sexual objects in K.R.’s bedroom, which led to their interrogating the defendant and

Mrs. Ratliff and asking for consent to search the house further. The state argues that the videotape was properly admitted because it was discovered after both the defendant and Mrs. Ratliff voluntarily consented to the search of the house and that, as the trial court found, the videotape inevitably would have been discovered even if the Ratliffs had not consented.

We first note that a trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Jones, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Odom, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which we review de novo on appeal. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. See State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997). The essence of these constitutional protections is "to 'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" Id. (quoting Camara v. Municipal Court, 387 U.S. 523, 528, 87 S. Ct. 1727, 1730 (1967)). Since an individual's expectation of privacy is nowhere higher than when in his or her own home, a "basic principle of Fourth Amendment law" is "that searches and seizures inside a home without a warrant are presumptively unreasonable." Payton v. New York, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980) (internal quotations omitted). Under the "fruit of the poisonous tree" doctrine, evidence that is obtained through exploitation of an unlawful search or seizure must be suppressed. See Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963).

The prohibition against warrantless searches and seizures is subject only to a few specifically established and well-defined exceptions. See Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967); State v. Tyler, 598 S.W.2d 798, 801 (Tenn. Crim. App. 1980). One of these exceptions is a search conducted pursuant to a valid consent to search. See Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043-44 (1973). "To pass constitutional muster, consent to search must be unequivocal, specific, intelligently given, and uncontaminated by duress or coercion." State v. Brown, 836 S.W.2d 530, 547 (Tenn. 1992). The validity of consent is determined by examining the facts. State v. Jackson, 889 S.W.2d 219, 221 (Tenn. Crim. App. 1993). The burden is on the state to prove that consent was freely and voluntarily given. Bumper v. North Carolina, 391 U.S. 543, 548, 88 S. Ct. 1788, 1791-92 (1968).

In the present case, the trial court found that the videotape was seized pursuant to a valid consent to search, which was given by both the defendant and his wife. The consent which immediately led to the discovery of the videotape was given when the defendant and Mrs. Ratliff were being interrogated at the Kingsport police station. The defendant asserts, however, that this consent was tainted by a prior unlawful search, namely Officer Cassidy's search of a drawer in the defendant's living room, which led to the discovery of marijuana seeds and the defendant consenting to broader search of the house, which led to the discovery of incriminating evidence of a sexual

nature. We agree that Officer Cassidy was not justified in grabbing a plastic bag and opening the drawer in the defendant's living room. While the plain view doctrine allows police to seize an object without a warrant when that object is located in plain view, one of the requirements of a valid "plain view" seizure is that the incriminating nature of the item is immediately apparent. State v. Hawkins, 969 S.W.2d 936, 938 (Tenn. Crim. App. 1997). By Officer Cassidy's own account, he seized the bag more out of curiosity than because of the apparently incriminating nature of the one-inch corner that he saw.

We note, though, that the cases the defendant cites in support of his argument deal with circumstances in which defendants gave consent while being unlawfully detained or after an unlawful entry into a residence. See Florida v. Royer, 460 U.S. 491, 507-508, 103 S. Ct. 1319, 1329 (1983); United States v. Caicedo, 85 F.3d 1184, 1190 (6th Cir. 1996); United States v. Richardson, 949 F.2d 851, 858 (6th Cir. 1991); United States v. Buchanan, 904 F.2d 349, 356 (6th Cir. 1990). In circumstances in which a person gives consent while being seized in violation of the Fourth Amendment, evidence discovered as a result "would be 'fruit of the poisonous tree' because there was no 'act of free will to purge the primary taint of the unlawful invasion.'" Caicedo, 85 F.3d at 1190 (quoting Wong Sun, 371 U.S. at 486). In the present case, the record shows that the consent given by the defendant and Mrs. Ratliff, which led to discovery of the videotape, was not given as the result of an illegal detention or illegal entry into their residence. Rather, the evidence shows that the consent, notwithstanding Officer Cassidy's prior unjustified intrusion into the defendant's privacy, was an act of free will. The defendant was not under arrest either when he granted Parker and Cassidy consent to search the house after they discovered the bag of marijuana seeds, or when he gave consent to search the house while being interrogated. The trial court accredited testimony that the defendant was apprised of his Miranda rights and understood the consent to search form that he signed before his interrogation. The defendant was not being unlawfully detained and was free to refuse consent to search the house. The same is true of Mrs. Ratliff, who consented to a search of the house and gave multiple incriminating statements after waiving her Miranda rights. The consent of both the defendant and Mrs. Ratliff were sufficiently purged of any taint stemming from Officer Cassidy's intrusion. See Wong Sun, 371 U.S. at 487-88. The evidence supports the trial court's finding that the videotape was seized pursuant to a valid consent to search the residence.

#### B. Authentication

The defendant contends that the videotape should not have been admitted into evidence because it was not properly authenticated pursuant to Tennessee Rule of Evidence 901. He argues that Ms. Ramsey-Miller did not have sufficient knowledge to authenticate the videotape. The state counters that Ms. Ramsey-Miller properly authenticated the tape and that it was properly admitted into evidence.

Tennessee Rule of Evidence 901(a) provides that the "requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims." Authentication can be established through the testimony of a witness with knowledge "that a matter

is what it is claimed to be.” Tenn. R. Evid. 901(b)(1). Once this foundation has been established, the “trier of fact then makes the ultimate decision of whether the item is actually what it purports to be.” Neil P. Cohen et al., Tennessee Law of Evidence § 9.01[2][a] (5th ed. 2005).

The defendant’s argument that the videotape was not properly authenticated is without merit. It is true that Ms. Ramsey-Miller was not present when the videotape was made. However, she had sufficient knowledge that the videotape was an exact copy of the same tape that was found by authorities in the defendant’s home. Ms. Ramsey-Miller also testified that she recognized the defendant’s voice on the video, recognized his face, and that the victim and Mrs. Ratliff’s names were spoken in the video. It was up to the jury as the trier of fact to determine whether the video actually depicted the defendant and victim engaged in sexual acts. The trial court did not err in admitting the videotape.

### C. Admissibility of Transcript

In the defendant’s final issue, he contends that the trial court erroneously allowed a transcript of the videotape to be admitted without a proper instruction to the jury. The state argues that the judge properly instructed the jury regarding the transcript. We agree with the state and discern no error.

In Tennessee, a transcript of a tape that is in evidence can be given to a jury, even when the transcript itself is not properly authenticated and admitted into evidence, if “the jury is instructed that the tape, and not the transcript is the actual evidence.” State v. Barnard, 899 S.W.2d 617, 624 (Tenn. Crim. App. 1994) (citing State v. Mosher, 755 S.W.2d 464, 469 (Tenn. Crim. App. 1988); State v. Smith, 656 S.W.2d 882, 888 (Tenn. Crim. App. 1983)). In the present case, the trial court allowed the state to supply jurors with a transcript of the audio portions of the videotape that was played during the trial. In doing so, the trial court instructed the jurors that the transcript was not to be read “independent of hearing the videotape,” that it was given to them “to assist [them] in following along and viewing the tape.” The court further instructed that although the transcript lists the defendant’s first name as the male voice in the video, it was only the state’s allegation that the defendant was the male in the video and that the jury was to decide based on all the evidence whether the video depicted the defendant. These instructions were sufficient to inform the jury that the transcript was not to be taken as evidence in and of itself. We further note that the transcript only reflects the audio portions of the video and does not purport to reflect the actual events depicted in the video. Therefore, any influence the transcript would have had over the jurors was minimal.

### CONCLUSIONS

Based on the foregoing and the record as a whole, we discern no error in the judgments of the trial court. The judgments are affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE